

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 631 of 1995

in

SPECIAL CIVIL APPLICATION No 13199 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KHODIAR RICE MILL

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Appellant

MR BD DESAI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 09/09/98

ORAL JUDGEMENT

#. This appeal is filed against an order passed by the learned Single Judge summarily dismissing Special Civil

Application No.13199 of 1994 on December 9, 1994.

#. The appellant was the original petitioner. He approached this Court by filing the above petition for a declaration that the order passed by the respondent authorities confiscating the entire goods worth Rs.1,45,000/- was illegal, unlawful, ultra vires and for direction to respondents to release the goods.

#. The case of the appellant was that it was carrying on the business in doing job work of milling rice. It was not dealing in sale and purchase of paddy or in rice or in any other essential article. The appellant used to receive paddy from traders and return the milled rice after doing job work at its factory at Bavla, near Ahmedabad.

#. It was stated in the petition that the Collector, Ahmedabad District - respondent No.2 issued a show-cause-notice to the petitioner on march 10, 1992 wherein certain allegations were levelled. Most of the defects and irregularities said to have been committed by the appellant were of technical nature, such as the board showing information did not mention the prices and the stock present; that weighing scale certificate and licence was not produced; that no lables were found on the stock of rice and paddy; that no details regarding price stock Board, record books and information Board was supplied; that the stock list mentioned details upto January 31, 1992; that necessary forms were not sent to the auhtorities, etc. One of the allegations, however, was that there was excess of quantity in rice to the extent of 25 quintals and shortfall of quantity in paddy to the extent of 317 quintals . Thus, according to the department, there was substantial shortfall in paddy and excess in rice. The explanation of the appellant was that milling process was going on. Had the authorities considered the said fact, there was neither increase in rice nor decrease in paddy. The authorities ought to have considered the fact that in view of the milling process being continued, there was no irregularity and/or illegality. The Collector, without considering the relevant materials, passed an order confiscating the entire commodity, valued at Rs.1,45,000/-. An appeal was filed which was dismissed except modification of about four quintals. A Special Civil Application was also dismissed by the learned Single Judge.

#. Mr.A.J.Patel, learned counsel for the appellant submitted that the appellant had not committed any illegality or irregularity. The authorities had

committed an error of law in ordering confiscation of goods. In the alternative, he submitted that even if it is held that the appellant had committed irregularities, they were of trivial and venial nature and the order of confiscation of entire stock worth Rs.1.45 lacs was illegal, unduly harsh and grossly disproportionate. In the facts and circumstances of the case, according to him, confiscation of lesser quantity ought to have been ordered.

#. Mr.B.D.Desai, Assistant Government Pleader on the other hand, supported the order passed by the authorities and confirmed by the learned Single Judge. He submitted that by exercising discretionary power, the learned Single Judge did not interfere with the order passed by the authorities under the Act and no illegality can be said to have been committed by the learned Single Judge.

#. So far as the first ground is concerned, we see no substance in the contention of Mr.Patel. When a finding is recorded that there were certain irregularities and allegations levelled against the appellant were proved, the said finding of fact cannot be disturbed. In exercise of powers under Article 226 of the Constitution, this Court cannot reappreciate the evidence on record. The finding must be taken as it is that the appellant had committed certain irregularities.

#. On the second point, however, we find considerable force in contention of Mr.Patel. No finding is recorded by the Collector or the appellate authority or by the learned Single Judge that there was intention of black marketing and/or hoarding on the part of the appellant. True it is that certain irregularities were committed. But while ordering confiscation, the authorities will have to apply their minds as to quantum in respect of which confiscation can be ordered.

#. In this connection, our attention was invited to a decision of the Supreme Court in N.Nagendra Rao & Co. Vs. State of Andra Pradesh, AIR 1994 SC 2663. In that case, dealing with the provisions of the Essential Commodities Act, 1955, the Apex Court observed that undoubtedly the power of confiscation under Section 6A was very wide and the person who violated the Control Orders could be visited with serious consequences leading not only to the confiscation of seized goods, packages, vessel or vehicle in which such essential commodity was found, conveyed or carried, but was also liable to be prosecuted and penalised under Section 7 of the Act. But it is inherent that those who are entrusted with

responsibility to implement it ought to act with reasonableness, fairness and to promote the purpose and objective of the Act. When the power to seize and confiscate goods is granted in favour of authorities, it cannot not be said that ipso facto, such power must be exercised and the entire commodity must be ordered to be confiscated. While ordering confiscation, the authorities ought to see what type of defects and irregularities were committed by the person concerned and what was the effect of such breach, violation or contravention. The legislature advisedly used the word "may". A trader involving in blackmarketing, or adulterating should not be put at par with a trader committing technical violation such as discrepancies in the stock.

##. Dealing with the power of confiscation under Section 6A of the Act, the Court stated;

"What needs to be mentioned is that since the power is very wide as a person violating the Control Orders is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found or is conveyed or carried, but is liable to be prosecuted and penalised under S.7 of the Act, it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, it should not be lost sight of that the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word 'may'. A trader indulging in black-marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock." (Emphasis supplied)

##. In the instant case, the main allegation is discrepancy in the stock. It was the case of the appellant that there was no discrepancy. As milling process was going on, there was shortfall in paddy and excess in rice. Thus, there was neither illegality, nor irregularity. In any case, as observed in N.NAGENDRA RAO

& CO., such irregularity, could not be equated with illegality, such as, blackmarketing and/or adulteration and/or hoarding of essential commodities.

##. Another factor which weighed with us in passing this order is that in reply to the show cause notice, the appellant had specifically stated that he was not the owner of Khodiyar Rice Mill. He was running a mill and doing job work. For that purpose, he had obtained licence. It was further stated that the commodities in question, namely paddy and rice seized and ordered to be confiscated did not belong to him. In Para-9 of Memo of appeal before the Deputy Secretary, Food and Civil Supply against the order passed by the Collector, it was stated that the Investigation Officers present during the time of investigation were even shown the stock of Dangar (paddy), rice and broken rice but no calculation was made by the investigating officers.

##. In the light of the above facts and circumstances, in our opinion, though the finding of fact regarding irregularities is not disturbed, the order of confiscation of entire stock cannot be said to be in accordance with law and cannot be upheld. The appeal, therefore, deserves to be partly allowed and order passed by the Collector, confirmed by the Government and by the learned Single Judge, is modified to the extent that confiscation of entire stock to the extent of Rs.1.45 lacs, is set aside and is modified to the extent of Rs.45,000/-. The remaining amount of Rs.1,00,000/- is ordered to be refunded to the appellant without interest. No order as to costs.

(C.K.Thakkar,J.)

Date : 9-9-1998 (A.M.Kapadia,J.)

(KPP)